

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

BRUCE S. SHERMAN and BRUCE & CYNTHIA SHERMAN CHARITABLE FOUNDATION, INC., Individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE FRESH MARKET, INC., RAY BERRY, RICHARD A. ANICETTI, MICHAEL CASEY, JEFFREY NAYLOR, RICHARD NOLL, BOB SASSER, ROBERT SHEARER, MICHAEL TUCCI, STEVEN TANGER, JANE THOMPSON, APOLLO GLOBAL MANAGEMENT, LLC, APOLLO MANAGEMENT VIII, L.P., POMEGRANATE HOLDINGS, INC., and POMEGRANATE MERGER SUB, INC.,

Defendants.

Case No. 1:17-CV-00179-TDS-JEP

**NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

**PLEASE TAKE NOTICE** that, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Plaintiffs Bruce S. Sherman and the Bruce & Cynthia Sherman Charitable Foundation, Inc. (“Plaintiffs”) in the above-entitled action (the “Action”), state as follows:

**WHEREAS**, on March 3, 2017, Plaintiffs filed this Action as a putative class action on behalf of former shareholders of The Fresh Market, Inc. (“Fresh Market”) in connection with the acquisition of Fresh Market (the “Buyout”), asserting claims under §§ 14(d)(4), 14(e), and 20(a) of the Securities Exchange Act of 1934;

**WHEREAS**, in accordance with lead plaintiff appointment provisions of the PSLRA, 15 U.S.C. §78u-4(a)(3), the Court appointed Plaintiffs as lead plaintiff and approved their choice of counsel on July 7, 2017;

**WHEREAS**, on May 30, 2017, as mandated by Local Rule 23.1(b) of the Rules of Practice

and Procedure of the United States District Court for the Middle District of North Carolina, requiring Plaintiffs to seek class certification within ninety (90) days of the filing of the Action, Plaintiffs moved, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), for certification of an opt-out class seeking money damages from Defendants;

**WHEREAS**, under Local Rule 7.3(f) of this Court, Defendants' response to the motion for class certification in this Action was initially due on June 20, 2017, but Defendants requested a thirty (30) day extension to oppose the motion, which Plaintiffs agreed to not oppose and which the Court granted on June 19, 2017;

**WHEREAS**, on July 26, 2017, certain Defendants in this Action moved to dismiss the Action for failure to state a claim;

**WHEREAS**, Defendants' memorandum of law in support of their motion to dismiss advised Plaintiffs in this Action for the first time that on June 21, 2017, in an action pending in the Chancery Court of the State of Delaware alleging parallel claims related to the Buyout based on Delaware state law as those asserted in this Action, *Morrison v. Berry et al.*, C.A. No. 12S0S-VCG (Del. Ch.) (the "Delaware State Action"), a mandatory non-opt-out class, pursuant to Ct. Ch. R. 23(b)(1) and (b)(2), was certified by agreement between Defendants and the plaintiff in the Delaware State Action during a telephonic hearing by the Delaware Vice-Chancellor overseeing the Delaware State Action, consisting of the same putative class members sought to be certified as members of an opt-out class in this Court, including Plaintiffs in this Action; and

**WHEREAS**, in light of the certification of an involuntary, mandatory non-opt-out class by the Delaware Chancery Court, Plaintiffs need to pursue their rights and remedies against Defendants in this Action on behalf of themselves and the other members of the class they sought to represent in this Action in the Delaware State Action, including, *inter alia*, the rights of class

members under the Due Process Clause of the United States Constitution;

**WHEREFORE**, Plaintiffs in this Action hereby voluntarily dismiss, without prejudice, this Action. This Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) is being filed with the Court before service by Defendants of either an answer or a motion for summary judgment.

Dated: August 15, 2017

Respectfully submitted,

**WILSON RATLEDGE, PLLC**

/s/ Michael A. Ostrander

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was electronically filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on August 15, 2017.

*/s/ Michael A. Ostrander*  
Michael A. Ostrander

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